IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O.O.C.J.

APPEAL NO.1112 OF 2005
IN
COMPANY APPLICATION (LODING) NO.704 OF 2005
IN
COMPANY PETITION NO.640 OF 2004

M/s.Ornate Multimodel Carriers Pvt.Ltd. .. Appellant

v/s.

M/s.Kasturi Transport Pvt.Ltd. .. Respondent

Mr.S.M.Railkar for the appellant.

Mr.J.M.D'Silva for the respondent.

CORAM : R.M.LODHA AND D.G.KARNIK, JJ.

DATED : 22nd December, 2005

P.C.

Heard Mr.S.M.Railkar, the learned counsel for the appellant.

2. It is true that the impugned order is not an order by consent as canvassed by the learned counsel for the respondent.

3. However, we are satisfied that the learned Company Judge did not commit any error in rejecting the application made by the appellant for recalling the order dated 15th April, 2005. By the order dated 15th April, 2005, the company petition filed by the respondent herein against the appellant-company was admitted. It is not in dispute that before the order of admission came to be passed on 15th April, 2005, the company was served with the prior notice. Despite the service

of notice, the company did not choose to appear. The explanation sought to be put forth by the company is that upon receipt of the notice of the company petition, the company engaged M/s.Kartik Desai and Associates as their advocates but due to the shifting of the office of the said advocates, Vakalatnama could not be filed and that resulted in non-appearance. We are not impressed by the submission. It is pertinent that to the statutory notice dated 9th May, 2003 that was served upon the company, no reply was sent disputing its liability.

4. All in all, the rejection of the application for recalling the order dated 15th April, 2005 by the impugned order does not call for any interference.

Appeal is dismissed in limine.

(R.M. LODHA, J.)

(D.G. KARNIK, J.)